

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 16 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

NORMA M.,)	2 CA-JV 2011-0133
)	DEPARTMENT B
Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC)	Appellate Procedure
SECURITY and DAKOTA G.,)	
)	
Appellees.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 13905700

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Joan Spurney Caplan

Tucson
Attorney for Appellant

Thomas C. Horne, Arizona Attorney General
By Michelle R. Nimmo

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

ESPINOSA, Judge.

¶1 Norma M. appeals from the juvenile court’s order terminating her parental rights to her daughter, Dakota G., born July 11, 2006, based on Norma’s abuse or neglect of Dakota, her chronic substance abuse, and Dakota’s placement in court-ordered, out-of-home care for fifteen months or longer.¹ See A.R.S. § 8-533(B)(2), (B)(3), (B)(8)(c). Norma argues insufficient evidence supported the court’s finding that termination was warranted on any of the above statutory grounds and additionally contends § 8-533(B)(8)(c) is unconstitutionally vague. We affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds clear and convincing evidence of one of the statutory grounds for severance and a preponderance of evidence that termination of the parent’s rights is in the child’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “[W]e view the evidence and reasonable inferences to be drawn from it in the light most favorable to sustaining the [juvenile] court’s decision, and we will affirm a termination order that is supported by reasonable evidence.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, ¶ 18, 219 P.3d 296, 303 (App. 2009) (citation omitted). That is, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable fact-finder could have found the evidence satisfied the applicable burden of proof. *Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009).

¶3 In April 2009, police officers arrested Norma at the home of Dakota’s father, Miguel G., for trespassing and for violating an order of protection. Miguel had

¹The juvenile court also terminated the parental rights of Dakota’s father, Miguel G., who is not a party to this appeal.

been arrested earlier that day for a previous domestic violence charge. The home was “unfit,” with no running water, electrical service, or gas service. Child Protective Services (CPS), a division of the Arizona Department of Economic Security (ADES), took temporary custody of Dakota.

¶4 Norma and Miguel had an extensive history of domestic violence, and Norma had lived in shelters with Dakota on several occasions, but had always returned to Miguel, most recently in late March 2009. A CPS report noted that Norma is an alcoholic but had never sought treatment. Dakota ultimately was placed with paternal relatives, and ADES filed a dependency petition. The juvenile court found Dakota dependent as to both her parents, initially setting a case plan for family reunification.

¶5 Norma was offered and participated in services including substance-abuse classes and relapse prevention, random urinalysis screening, parenting classes, individual counseling, and Family Drug Court. In October 2009, she was evaluated by psychologist Dr. Philip Balch. He diagnosed her as dependent on and abusing alcohol, noting her dependence was “in self-reported partial remission.” He also diagnosed her with a personality disorder that included “addictive, anti-social, dependent, depressive features.” He reported that she resorted to alcohol to deal with feelings of being overwhelmed and had been “repetitively involved in dysfunctional and abusive relationships,” noting “ongoing concerns regarding her ability to protect minors, maintain sobriety, and remain free of problematic relationships.”

¶6 Despite initial compliance with her case plan, in June 2009 Norma began to test positive for alcohol, doing so several times over the next six months. After completing an inpatient treatment program in August 2010, however, Norma appeared to

make progress by obtaining employment and housing and testing negative for alcohol for approximately three months. But by November 2010, she had tested positive for alcohol at least nine times and also had reconciled with Miguel despite having been ordered to have no contact with him.

¶7 In February 2011, the juvenile court found Dakota could not safely be returned to either parent and ordered ADES to file a motion to terminate their parental rights. In that motion, ADES alleged termination of Norma's parental rights was warranted based on neglect or abuse, chronic substance abuse, and time-in-care grounds. After a twelve-day contested severance hearing, the court terminated both parents' rights to Dakota, finding that all alleged statutory bases for termination had been proven by clear and convincing evidence and that termination was in Dakota's best interests. This appeal followed.

¶8 Norma asserts there was insufficient evidence to warrant termination of her parental rights on the grounds of chronic substance abuse pursuant to § 8-533(B)(3). Termination is warranted on that basis if "the parent is unable to discharge parental responsibilities because of . . . a history of chronic abuse of . . . alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." *Id.* Norma argues "the only evidence that the [juvenile] court could have relied upon was [the testimony of] Dr. Balch." She claims, without citation to authority, that "because his report was so old, any concerns he had at the time would be irrelevant."

¶9 We find no authority, and nothing in the record, suggesting Balch's initial evaluation of Norma was "irrelevant." Instead, that evaluation provided context for his

trial testimony, including that, given her recent positive tests for alcohol, Norma's alcohol dependency "was still an active problem."² He also opined that recent positive tests would create "concerns about whether she could maintain sobriety" and that at least "one year of sobriety is considered full remission." He stated "there would be a risk" of abuse or neglect due to Norma's difficulties in maintaining her sobriety, and her substance abuse issues impacted her "judgment and attention," resulting in involvement with the legal system that "could prohibit [her] ability to parent because [she] might be incarcerated," and "demonstrates poor role modeling and the kind of parenting that a child might need."³ He also discussed her personality disorder, noting that she used alcohol to attempt to resolve her depressive issues, and that, by definition, her personality disorder was "chronically engrained behavior" and was "the most intransigent kind of mental health issue that we face." And he further observed that alcohol abuse and personality disorders like Norma's "make parenting a difficult situation."

²We summarily reject Norma's argument that Balch's testimony on this point was somehow inadequate because he did not use the term "alcohol abuse." It is abundantly clear from Balch's testimony that he was discussing Norma's addiction to and abuse of alcohol.

³Norma characterizes this testimony as "speculative," apparently because Balch did not say with certainty that her continued alcohol dependence would result in her incarceration or in poor parenting. Norma also generally argues that Balch's testimony was "painfully non-responsive and/or replete with hedging." Balch acknowledged he had not recently evaluated Norma, but that does not mean his expert opinions, viewed in conjunction with evidence presented during the termination hearing, do not support the juvenile court's conclusion that Norma's alcohol dependence would prevent her from adequately discharging her parental duties and would continue for a prolonged indefinite period. The juvenile court was in the best position to weigh that testimony and draw its own conclusions, and we find no clear error in its findings. *See Leslie C. v. Maricopa Cnty. Juv. Court*, 193 Ariz. 134, 136, 971 P.2d 181, 183 (App. 1997).

¶10 As noted above, there was ample evidence that Norma had continued to use alcohol. And her case manager, a trained substance abuse therapist, noted her longest period of sobriety had been ten months—six months of which was spent in a residential treatment program. He opined that, based on her history of alcohol abuse and positive tests, she continues to suffer from alcohol abuse and that use “renders her unable to appropriately parent Dakota.” And Norma’s purportedly temporary reconciliation with Miguel shortly after she relapsed in alcohol treatment, plainly supports the juvenile court’s conclusion that Norma has been unable “to demonstrate a safe and sober lifestyle for any extended period of time.” Norma acknowledged, consistent with Balch’s testimony, that her relapse resulted from stress, demonstrating that she lacks healthy coping skills.

¶11 We reject Norma’s claim that, because there was no evidence revealing the quantity of alcohol she had consumed when she tested positive or whether she became “impaired,” the evidence does not show her continued alcohol use would interfere with her ability to parent effectively. Norma was informed she had to remain free of alcohol in order to be reunited with Dakota. That she failed to do so strongly supports a conclusion that her alcohol dependency would prevent her from fulfilling her parental duties. *See Raymond F. v. Ariz. Dep’t of Econ. Sec.*, 224 Ariz. 373, ¶ 29, 231 P.3d 377, 383 (App. 2010) (father’s failure to remedy substance abuse “despite knowing the loss of his children was imminent” supports conclusion abuse will persist and “negatively affect his parenting abilities”). We find ample evidence in the record supporting the juvenile court’s determination that Norma’s continuing inability to control her alcohol dependency was unlikely to abate, and interfered with her ability to effectively parent Dakota.

¶12 Because we have determined the juvenile court did not err in terminating Norma's parental rights based on § 8-533(B)(3), we need not address her remaining arguments, including her constitutional challenge to § 8-533(B)(8)(c). *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000). Accordingly, the juvenile court's order terminating Norma's parental rights to Dakota is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge